



**Washington Coalition for Insurance Parity**  
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June 22, 2007

Honorable Patty Murray  
United States Senator  
173 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Murray:

Thank you for your outstanding service to Washington State. We especially appreciate your commitment to protecting our mental health parity law. I am writing on behalf of the Washington Coalition for Insurance Parity to summarize our concerns about the June 13, 2007 version of the Mental Health Parity Act of 2007 (the "Manager's Amendment").

After ten years of hard work, Washington State has one of the best mental health parity laws in the nation. Enacted by large bipartisan majorities in the Washington State Legislature and supported by our diverse coalition of 142 organizations (see footnote 1 and the enclosed list),<sup>1</sup> our parity law protects almost two million Washington residents from health insurance discrimination.

Our parity coalition supports enactment of a strong and comprehensive federal parity law. Unfortunately, both parity bills under consideration by the U.S. Congress – S. 558 and H.R. 1424 – are limited and weaker than Washington's law in their ability to eliminate health insurance discrimination. Neither bill protects employees of small businesses, individual policy holders, Medicare enrollees, or significant numbers of Medicaid enrollees from insurance discrimination. Both bills include a mandated offering rather than a mandated benefit, as well as a discriminatory cost exemption.

The coalition recognizes the political environment surrounding enactment of a federal parity law, and therefore we have not advocated strengthening the limited and weak provisions of S. 558 or H.R. 1424. ***The coalition's main concern is to protect Washington's strong mental health parity law from federal preemption threatened by the Manager's Amendment.***

The Manager's Amendment attempts to clean up some provisions that risk preempting Washington State's mental health parity law; however, the coalition remains unconvinced that our law will be protected.<sup>2</sup> The preemption language in the amendment is ambiguous and contradictory.

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<sup>1</sup>The most influential organizations include: AARP Washington, Association of Washington Cities, Children's Alliance, Greater Seattle Business Association, NAMI Washington, Service Employees International Union/1199NW, Washington Education Association, Washington Federation of State Employees, Washington Protection and Advocacy Systems, Washington State Association of Counties, Washington State Hospital Association, Washington State Labor Council, Washington State Medical Association, Washington State Nurses Association, Washington State Psychiatric Association, Washington State Psychological Association, and the Washington State Trial Lawyers Association.

<sup>2</sup> At least 13 state parity laws could also be preempted by the Manager's Amendment: Connecticut, Indiana, Kentucky, Maine, Maryland, Minnesota, Montana, Nevada, New Mexico, New York, Oregon, Rhode Island, and Vermont.

Specifically, the Special Preemption Rule in Section 4 creates ambiguity and confusion by including a broad provision preempting any state “mental health parity standard or requirement” and then adds contradictory language that tries unsuccessfully to protect state parity laws in the following areas: individual and small group health plans, out of network coverage, and a mandated benefit.

If Washington’s mandated benefit is preempted by the ambiguous and contradictory language of the Manager’s Amendment, then employers and health plans can avoid providing mental health benefits altogether. The amendment’s mandated offering provides that if a health plan does not offer mental health benefits, it does not have to provide parity between mental health and physical health benefits. The coalition wants clear, unambiguous language protecting our mandated benefit, as well as other important provisions of Washington’s parity law.

The coalition’s concern that state parity laws could be preempted by the Manager’s Amendment is supported by Mila Kofman’s preemption analysis that concludes:

“The new preemption standards in S. 558 would expand ERISA preemption, create a federal ceiling on consumer protections, and preempt stronger state-based standards. \*\*\* ...the current language falls short of ensuring that existing individual and small group laws as well as benefit mandates in the states are saved from the new preemption language that would be added to ERISA. \*\*\* In summary, because of the ambiguities in the exceptions to broad preemption in S. 558 and a history of extensive litigation to determine the extent of ERISA preemption, courts may be looking at the scope of the new preemption for many years, with potentially conflicting outcomes.”<sup>3</sup>

The cost exemption provision of the Manager’s Amendment also puts Washington’s parity law at risk. The amendment expressly preempts state law by allowing health plans to opt out of providing mental health parity based on increases in the health plan’s actual total cost of coverage. The cost exemption for a two percent increase in the plan’s first year and one percent in subsequent years is artificially low for mental health parity and substance abuse benefits. Nor does the exemption provide an objective way to verify a plan’s actual cost increase because the actuarial analysis does not need to be independent or made publicly available. To cite one of several examples, during the 2007 legislative debate on Washington’s parity law, at least one health plan claimed without documentation that the cost of providing mental health parity to the small group market would increase premiums *three to six percent* compared to *a less than one percent* increase projected by an independent actuary.

Some argue that the cost exemption will not be used by health plans to opt out of providing mental health coverage because of the complicated process. If the exemption will rarely or never be used, why impose it on states that do not include any cost exemption? A cost exemption provision that can be easily “gamed” at the risk of some of Washington’s most vulnerable residents should be rejected. And why does the cost exemption provision not consider the many savings resulting from a parity law – such as reductions in other health care costs, less absenteeism, increased productivity, and fewer disability claims?

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<sup>3</sup> Preemption analysis of the Manager’s Amendment prepared at the request of Speaker of the House Nancy Pelosi by Mila Kofman, Associate Research Professor, Health Policy Institute, Georgetown University, June 15, 2007.

***Most disturbing, the cost exemption provision discriminates against people living with a mental illness.*** The provision, applied only to mental illness and not to other chronic illnesses such as heart disease, cancer, and diabetes, is neither parity nor equity.

A federal bill should establish a “floor” for parity, allowing states to enact and implement stronger, more comprehensive parity laws. As noted by Professor Kofman, “...establishing a federal ceiling on consumer protection is a considerable departure from a decade of federal health care reforms that established a minimum national standard and allowed for more protective state-based rights.”<sup>3</sup>

The Washington Coalition for Insurance Parity respectfully urges you to oppose the preemption provisions of the Manager’s Amendment by withholding your unanimous consent. We also encourage you to work with Senator Kennedy and others to enact a strong federal parity law that clearly and unambiguously protects state laws from federal preemption.

Thank you very much for listening and addressing our concerns.

Sincerely,

A handwritten signature in black ink, reading "Randy Revelle". The signature is fluid and cursive, with the first name "Randy" and last name "Revelle" clearly distinguishable.

**Randy Revelle, Chairman**  
Washington Coalition for Insurance Parity

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<sup>3</sup> Preemption analysis of the Manager’s Amendment prepared at the request of Speaker of the House Nancy Pelosi by Mila Kofman, Associate Research Professor, Health Policy Institute, Georgetown University, June 15, 2007.



## Washington Coalition for Insurance Parity Coalition Members/Supporters

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*The following 142 organizations support extending the existing Washington State mental health parity law to the small group (small business) and individual insurance markets:*

- AARP Washington
- Affiliated Mental Health Programs
- African American Mental Health Professionals of Western WA
- Alliance of People with disabilities
- American Academy of Pediatrics, Washington Chapter
- American Civil Liberties Union of Washington
- American College of Physicians, Washington Chapter
- ARNP of Washington State
- Association of Advanced Practice Psychiatric Nurses
- Association of Washington Cities
- Association of Washington Public Hospital Districts
- Behavioral Health Resources
- Ben Bridge Jewelers Inc.
- Catholic Charities, Diocese of Spokane
- Catholic Community Services of Western Washington
- Catholic Family and Child Service, Diocese of Yakima
- Children's Alliance
- Children's Home Society of Washington
- Children's Hospital and Regional Medical Center
- CHOICE Regional Health Network
- Church Council of Greater Seattle
- Columbia River Mental Health Services
- Common Ground for Children and Families
- Community Advocacy Coalition
- Community Health Network of Washington
- Community Psychiatric Clinic
- Compass Health
- Crisis Clinic
- Family Medicine of Yakima
- Family Services of King County
- FareStart
- Fremont Public Association
- Good Samaritan Behavioral Health Care
- Grant Mental Healthcare
- Greater Lakes Mental Health Care
- Greater Seattle Business Association
- Green Party of Seattle
- Harborview Medical Center
- Health Care for All/Washington
- Intercommunity Peace and Justice Center
- Japanese American Citizens League/Pacific Northwest District
- Jewish Family Services
- Jewish Federation of Greater Seattle
- League of Women Voters of Washington
- Lutheran Community Services Northwest
- Lutheran Public Policy Office of Washington State
- Mental Health Association of Washington
- Minority Executive Directors Coalition
- MultiCare Health System
- National Alliance on Mental Illness (NAMI) of Washington
- NAMI Citizens Guild of Western State Hospital
- NAMI Chelan/Douglas Counties
- NAMI Clallam County
- NAMI Clark County
- NAMI Cowlitz County
- NAMI Eastside
- NAMI Greater Seattle
- NAMI Jefferson County
- NAMI Kitsap County
- NAMI Kittitas County
- NAMI Lewis County
- NAMI North Sound
- NAMI Palouse
- NAMI Pierce County
- NAMI Skagit County
- NAMI Snohomish County
- NAMI South King County
- NAMI Spokane
- NAMI Thurston/Mason Counties
- NAMI Tri-Cities
- NAMI Wahkiakum
- NAMI Walla Walla
- NAMI Whatcom County
- NAMI Whidbey Island
- NAMI Yakima
- National Association of Social Workers, Washington Chapter
- National Eating Disorders Association
- National Healthy Mothers, Healthy Babies Coalition
- Northwest Alliance for Psychoanalytic Study
- Northwest Federation of Community Organizations

- Northwest Health Law Advocates
- Okanogan Behavioral Health Care
- Older Women's League, Seattle/King County Chapter
- Partners with Families and Children: Spokane
- Peninsula Community Mental Health Center
- Plymouth Housing Group
- Seattle Education Association
- Seattle Human Services Coalition
- Seattle Mental Health
- Seattle Psychoanalytic Society and Institute
- Senior Citizen's Lobby
- Senior Services of Seattle/King County
- Service Employees International Union/1199NW
- Snohomish County Labor Council, AFL-CIO
- Tacoma Area Coalition of Individuals with Disabilities (TACID)
- Timberlands Regional Support Network (RSN)
- Timberlands RSN Advisory Board
- Transitional Resources
- Valley Cities Counseling/Consultation
- Volunteers of America, Spokane
- Washington Academy of Family Physicians
- Washington Academy of Physician Assistants
- Washington Association for Marriage and Family Therapy
- Washington Association for Substance Abuse and Violence Prevention
- Washington Association of Area Agencies on Aging
- Washington Association of Churches
- Washington Association of Community/ Migrant Health Centers
- Washington Education Association
- Washington Community Action Network
- Washington Community Mental Health Council
- Washington Federation of State Employees
- Washington Food Coalition
- Washington Health Care Association
- Washington Health Foundation
- Washington Mental Health Counselors Association
- Washington Protection and Advocacy System
- Washington Public Employees Association
- Washington Re-Education Association
- Washington State Association of Counties
- Washington State Catholic Conference
- Washington State Coalition of Mental Health Professionals/Consumers
- Washington State Council of Child and Adolescent Psychiatrists
- Washington State Council on Aging
- Washington State Developmental Disabilities Council
- Washington State Hospital Association
- Washington State Labor Council, AFL-CIO
- Washington State Medical Association
- Washington State Nurses Association
- Washington State Parent Teacher Association
- Washington State Partners in Crisis
- Washington State Pharmacy Association
- Washington State Psychiatric Association
- Washington State Psychological Association
- Washington State Public Health Association
- Washington State Society for Clinical Social Work
- Washington State Special Education Coalition
- Washington State Tourette Syndrome Association
- Washington State Trial Lawyers Association
- Whatcom Counseling and Psychiatric Clinic
- Yakima County Health Care Coalition
- YFA Connections
- Youth Suicide Prevention Program